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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/584,182	08/03/2007	Luc Barvais	09997.0136USWO	1255
23552 7590 07/07/2010 MERCHANT & GOULD PC P.O. BOX 2903 MINNEAPOLIS, MN 55402-0903				
EXAMINER				
PRICE, NATHAN R				
ART UNIT		PAPER NUMBER		
3763				
MAIL DATE		DELIVERY MODE		
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/584,182

Applicant(s)

BARVAIS ET AL.

Examiner

NATHAN R. PRICE

Art Unit

3763

Period for Reply -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 04 January 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-12 and 14-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-12 and 14-20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/G6/US)
Paper No(s)/Mail Date 06/23/2006; 09/21/2007
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Response to Amendment

1. This office action is responsive to the preliminary amendment filed on January 4, 2008. As directed by the amendment: claims 1, 3-11, 14, and 15 have been amended, claims 13 have been cancelled, and new claims 16-20 have been added. Thus, claims 1-12 and 14-20 are presently pending in this application.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 1-12 and 14-20 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

4. Claims 4 and 5 recite the limitations "may be independently transportable" and "may set the level", respectively. Because of the language "may" it is unclear whether these limitations are optional functional limitations. For the purposes of examination, they are interpreted as such.

5. Claim 14 recites the language "a minimal amount of time has to pass **between to** subsequent modifications...." (emphasis added). This limitation is grammatically incorrect and indefinite.

6. Furthermore, the claims are replete with limitations lacking antecedent basis. Examiner has provided a list of limitations below. Applicant should review all claims to insure proper antecedent basis.

7. Claim 1 recites the limitations "the modeling of anesthesia procedures", "said sensors", "the type of surgical action and/or therapy", "the type of drugs, tools, and theoretical models". There is insufficient antecedent basis for these limitations in the claim.
8. Claim 3 recites the limitations "the control" and "the same program". There is insufficient antecedent basis for these limitations in the claim.
9. Claim 5 recites the limitations "the person in charge" and "the level of desired assistance". There is insufficient antecedent basis for these limitations in the claim.
10. Claim 7 recites the limitation "the trigger". There is insufficient antecedent basis for this limitation in the claim.
11. Claim 9 recites the limitation "the group". There is insufficient antecedent basis for this limitation in the claim.
12. Claim 11 recites the limitation "the drug state model". There is insufficient antecedent basis for this limitation in the claim.
13. Claim 15 recites the limitations "the reliability", "the quality", and "the deviation". There is insufficient antecedent basis for these limitations in the claim.
14. Claim 18 recites the limitation "the drug state model". There is insufficient antecedent basis for this limitation in the claim.
15. Claims 19 and 20 recite the limitations "the step". There is insufficient antecedent basis for these limitations in the claims.
16. Claims 2, 6, 8, 10, 12, 16, and 17 are rejected as being dependent on a claim rejected under this statute.

Claim Rejections - 35 USC § 102

17. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

18. Claims 1-12 and 14-20 are rejected under 35 U.S.C. 102(b) as being anticipated by Ford et al. (US 20020077852).

19. Regarding claims 1-12 and 14-20, Ford et al. discloses a system (fig. 2) comprising an infusion controller 53; a communication controller (82, 84); infusion pump (fig. 1); a GUI (fig. 4); a first interface link (interface between 53 and 40, 40 interacting with 45); a session controller 41; a second interface (interface between 41 and 40, 40 interacting with 45); a processor 40; a set of configurable written procedures (in ROM 46); a datalogger controller 42 with one or more sensors 52 and a third interface (interface between 42 and 40, 40 interfacing with 45); and an archiving manager 48; the apparatus capable of performing the claimed functions.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to NATHAN R. PRICE whose telephone number is (571)270-5421. The examiner can normally be reached on Monday-Thursday, 9:00 a.m. - 5:00 p.m. EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nicholas Lucchesi can be reached on 571-272-4977. The fax phone

number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/N. R. P./
Examiner, Art Unit 3763

/Nicholas D Lucchesi/
Supervisory Patent Examiner, Art
Unit 3763